

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.
--

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LEE CLOUGH,

Defendant and Appellant.

2d Crim. No. B151732  
(Super. Ct. No. 1010848)  
(Santa Barbara County)

Robert Lee Clough appeals from the judgment revoking probation and ordering execution of a three-year prison sentence. (Pen. Code, § 1203.2, subd. (c).)<sup>1</sup> He contends that the trial court abused its discretion in revoking probation because the evidence is insufficient to prove that he violated probation. We affirm.

FACTS

On November 29, 2000, appellant pled no contest to possessing and using a tear gas weapon (§ 12403.7, subds. (a), (g)). Imposition of sentence was suspended and appellant was placed on three years probation. As a condition of his probation, appellant was ordered, among other things, to report in the manner directed by his probation officer, to keep his probation officer apprised of his place of residence, and to participate

---

<sup>1</sup> Further statutory references are to the Penal Code.

in mental health counseling and take prescribed medications. The prosecution expressly warned appellant that "should you violate any of the terms and conditions of your probation you could then be sentenced to state prison for up to three years."

The probation department had recommended that probation be denied, noting that appellant had numerous convictions for violent behavior and had repeatedly failed to comply with the terms of his probation in the past due to his mental illness. The department also referred to the circumstances of appellant's current offense: "When the victim in this case encountered the defendant . . . , he could not have known he was about to be sprayed with pepper spray by a mentally ill individual. He is fortunate that the defendant did not possess a more lethal weapon. It is certain that he is capable of using any weapon, but it cannot reasonably be predicted what will provoke him. [Appellant] is dangerous and the lengths to which he will go are unknown." The psychologist who conducted a pre-plea evaluation concluded that appellant's ". . . provocative style and violent self-defense based on suspiciousness suggest that he is at moderate risk to engage in violent behavior in his future."

Appellant reported to probation officer Lynda Scott on November 30, and again on December 1, 2001, when he was instructed to contact Scott on December 6 to ascertain the name of his new probation officer. On December 6, appellant left a voice mail message with Scott stating that he was leaving the homeless shelter where he had been staying. He had no further contact with the probation department until he was taken into custody on December 24. On December 11, probation officer Spencer Cross was assigned to supervise appellant. Cross learned that appellant had gone to the Catholic Charities Homeless Day Center after he left the homeless shelter, but had been removed a few days later after he exhibited violent and abusive behavior. On December 19, appellant's attorney told Cross that he had spoken with appellant and had informed him that his new probation officer was looking for him.

On December 24, 2000, appellant was taken into custody for disturbing the peace and was subsequently charged with violating probation by failing to report. After a

probation revocation hearing, the trial court found that appellant had failed to follow Scott's directions to contact her on December 6 in order to find out who his probation officer was. The court also found that appellant had violated his probation by failing to keep the department apprised of his whereabouts, noting that ". . . it is not the responsibility of Ms. Scott or Mr. Cross . . . to try and find out where you are or to try and find any of the other probationers who are in their charge." Accordingly, the court revoked appellant's probation and imposed sentence of three years in state prison.

### DISCUSSION

Appellant contends that the trial court abused its discretion in revoking his probation because there is insufficient evidence to support the finding that he failed to report. According to appellant, he was simply instructed to "contact" probation on December 6, and he did so by leaving a voice mail message. This contention is without merit.

Section 1203.2, subdivision (a) provides in pertinent part that "the court may revoke and terminate . . . probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . ." This statute "give[s] trial courts very broad discretion in determining whether a probationer has violated probation. [Citations.]" (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) The facts supporting probation revocation need only be proved by a preponderance of the evidence. (*Id.* at p. 441.) It is "only in a very extreme case" that appellate courts should interfere with the trial court's discretion in the matter of revoking probation. (*Id.* at p. 443; *People v. Lippner* (1933) 219 Cal. 395, 400.)

The record here amply supports the trial court's finding that appellant willfully failed to report to probation in the manner directed by his probation officer. Appellant was not merely instructed to contact the probation department on December 6, but rather was directed to contact the department on that date for the specific purpose of ascertaining the identity of his new probation officer. Although he left a voice mail

message, he never made any effort to find out who his probation officer was or to keep the department apprised of his whereabouts. He also ignored his attorney's advisement that his probation officer did not know where he was and that he was expected to report. Under these facts, it cannot be said that the trial court abused its discretion in revoking appellant's probation for failure to report. (*People v. Rodriguez, supra*, 51 Cal.3d at p. 443.)

Appellant cites *People v. Buford* (1974) 42 Cal.App.3d 975, 986, and *People v. Zaring* (1992) 8 Cal.App.4th 362, 375, for the proposition that a probation revocation based on a failure to report must be supported by evidence that the probationer's failure was willful and not merely the result of a mistake or misunderstanding. We do not disagree with that proposition, but the evidence here is sufficient to prove a willful violation.

We reject appellant's assertion that he reasonably believed he had satisfied any reporting requirements for the month of December because he wrote "November and December" on the monthly reporting form he signed on November 30. We also reject his contention that his failure to report was a "minor technicality" and was thus insufficient to warrant revocation of his probation.

Appellant is homeless and suffers from mental illness. Unfortunately, he has shown by his spontaneous and willful acts that he poses a danger to society. The trial judge sought to accommodate both appellant's needs and those of the community by granting probation with the expressed statement that appellant would be held to strict compliance with its terms and conditions. Yet, within two weeks of his release, appellant failed to comply with the instruction that he contact his probation officer. Although he left a voice mail message, have gave no indication as to where he could be found. His conduct while unsupervised made it clear to the trial judge that probation was no longer a reasonable alternative. Still, revocation of probation would not be justified absent a violation. The record is clear, however, that his failure to report was clearly established, was not a "minor technicality," and was sufficient to warrant revocation.

The judgment (order revoking probation) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Thomas R. Adams, Judge  
Superior Court County of Santa Barbara

---

Julia S. Swanson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Marc E. Turchin, Senior Assistant Attorneys General, Robert David Breton, Deputy Attorney General, for Plaintiff and Respondent.